

10-7-2016

Phillips v. Gomez Clerk's Record Dckt. 44594

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Phillips v. Gomez Clerk's Record Dckt. 44594" (2016). *Idaho Supreme Court Records & Briefs, All*. 6552.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/6552

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

TODD J. PHILLIPS, in his capacity as
Trustee of Trust "A" of the Elliott Family
Testamentary Trust,

Plaintiff-Appellant,

vs.

RICHARD D. GOMEZ,

Defendant-Respondent.

Supreme Court Case No. 44594

LIMITED CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE DEBORAH BAIL

CHARLES J. NICHOLAS

ATTORNEY FOR APPELLANT

BOISE, IDAHO

STEVEN FISHER

ATTORNEY FOR RESPONDENT

MERIDIAN, IDAHO

In the Supreme Court of the State of Idaho

TODD J. PHILLIPS, in his capacity as
Trustee of Trust "A" of the Elliott Family
Testamentary Trust,

Plaintiff-Appellant,

v.

RICHARD D. GOMEZ,

Defendant-Respondent.

ORDER AUGMENTING PRIOR
APPEAL

Supreme Court Docket No. 44594-2016
Ada County No. CVOC-2013-20057

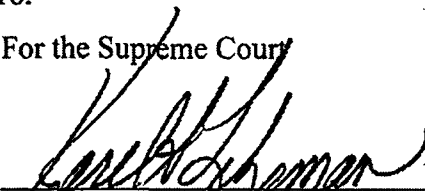
A Clerk's Record, Reporter's Transcript and Exhibits were filed *electronically* with this Court in prior appeal No. 43678, *Phillips v. Gomez* (Ada County No. CV-2013-20057). Therefore,

IT HEREBY IS ORDERED that this Record on Appeal shall be AUGMENTED to include the Clerk's Record, Reporter's Transcript and Exhibit filed in prior appeal No. 43678, *Phillips v. Gomez* (Ada County No. CV-2013-20057).

IT FURTHER IS ORDERED that the District Court Clerk shall prepare and file a LIMITED CLERK'S RECORD with this Court, which shall contain documents requested in this Notice of Appeal together with a copy of this Order, but shall not duplicate any document included in the Clerk's Record filed in prior appeal No. 43678. Furthermore, the LIMITED CLERK'S RECORD shall be filed with this Court after settlement occurs.

DATED this 9th day of November, 2016.

For the Supreme Court


Karel A. Lehrman, Chief Deputy Clerk for
Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Judge Deborah A. Bail

Entered on JSI

By: kg

ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE NO. CV-OC-2013-20057

Todd J Phillips
vs.
Richard D Gomez

§
§
§
§
§

Location: Ada County District Court
Judicial Officer: Bail, Deborah A.
Filed on: 11/06/2013
Appellate Case Number: 43678

CASE INFORMATION

Statistical Closures
09/24/2015 Closed

Case Type: AA- All Initial District Court
Filings (Not E, F, and H1)

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	CV-OC-2013-20057
Court	Ada County District Court
Date Assigned	11/06/2013
Judicial Officer	Bail, Deborah A.

PARTY INFORMATION

Plaintiff **Phillips, Todd J**

Lead Attorneys
Nicholas, Charles Joseph
Retained
208-340-6600(W)

Defendant **Gomez, Richard D**

Fisher, Steven
Retained
208-350-7277(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

11/06/2013	New Case Filed Other Claims <i>New Case Filed - Other Claims</i>	
11/06/2013	Complaint Filed <i>Complaint Filed</i>	
11/06/2013	Summons Filed <i>Summons Filed</i>	
11/12/2013	Affidavit of Service <i>(5) Affidavit Of Service 11.8.13</i>	
04/23/2014	Notice of Appearance <i>Notice Of Appearance (Fisher for Gomez)</i>	
05/13/2014	Miscellaneous <i>Notice of Intent to Dismiss</i>	
05/16/2014	Motion <i>Defendant's Motion to Dismiss</i>	
06/05/2014	Motion <i>Defendant's IRCP 12(e) Motion for More Definite Statement and IRCP 12(f) Motion to Strike</i>	
06/05/2014	Memorandum <i>Defendant's Memorandum in Support of Motion to Dismiss and IRCP 12(e) and 12(f) Motions</i>	



ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE No. CV-OC-2013-20057

06/05/2014	Miscellaneous <i>Declaration of Counsel for Defendant</i>
06/19/2014	Notice of Hearing <i>Notice Of Hearing (7/23/14 @ 2:30 pm)</i>
06/19/2014	Hearing Scheduled <i>Hearing Scheduled (Motion to Dismiss 07/23/2014 02:30 PM)</i>
07/23/2014	Hearing Vacated <i>Hearing result for Motion to Dismiss scheduled on 07/23/2014 02:30 PM: Hearing Vacated</i>
07/23/2014	CANCELED Motion to Dismiss (2:30 PM) (Judicial Officer: Bail, Deborah A.) <i>Vacated</i>
07/28/2014	Amended <i>First Amended Complaint</i>
07/28/2014	Summons Filed <i>Summons Filed For First Amended Complaint</i>
08/13/2014	Hearing Scheduled <i>Hearing Scheduled (Jury Trial 04/14/2015 09:30 AM) (2 days)</i>
08/13/2014	Miscellaneous <i>Notice of Trial Setting and Order Governing Further Proceedings</i>
09/08/2014	Answer <i>Answer Affirmative Defenses Counterclaim and Demand for Jury Trial (Steven Fisher for Defendant)</i>
03/19/2015	Answer <i>Plaintiff's Answer to Defendant's Counterclaim</i>
03/27/2015	Stipulation <i>Stipulation to Vacate Trial Setting and Re-Set</i>
03/27/2015	Motion <i>Motion to Vcate and Re-Set Trial</i>
04/01/2015	Hearing Vacated <i>Hearing result for Jury Trial scheduled on 04/14/2015 09:30 AM: Hearing Vacated (2 days)</i>
04/02/2015	Order <i>Order Vacating Trial</i>
04/06/2015	Notice <i>Defendant's Notice Of Unavailable Dates</i>
04/07/2015	Miscellaneous <i>Unavailable Dates</i>
04/14/2015	CANCELED Jury Trial (9:30 AM) (Judicial Officer: Bail, Deborah A.) <i>Vacated</i> <i>(2 days) Hearing result for Jury Trial scheduled on 04/14/2015 09:30 AM: Hearing Vacated</i>
05/07/2015	Hearing Scheduled <i>Hearing Scheduled (Jury Trial 09/01/2015 09:30 AM) 2 days</i>
05/11/2015	Miscellaneous <i>Amended Notice of Trial Setting</i>

ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE NO. CV-OC-2013-20057

05/11/2015	Miscellaneous <i>AMENDED Notice of Trial Setting</i>
08/19/2015	Miscellaneous <i>Defendant's Proposed Jury Instructions</i>
08/25/2015	Witness List <i>Pretrial Schedule of Exhibits And List of Witnesses</i>
08/25/2015	Miscellaneous <i>Defendant's Witness and Exhibit Lists</i>
08/25/2015	Miscellaneous <i>Defendant's Certificate of Compliance with Order Governing Further Proceedings</i>
09/01/2015	Court Trial Started <i>Hearing result for Court Trial scheduled on 09/01/2015 09:00 AM: Court Trial Started</i>
09/01/2015	DC Hearing Held: Court Reporter: # of Pages: <i>District Court Hearing Held</i> <i>Court Reporter: Nicole Julson</i> <i>Number of Transcript Pages for this hearing estimated: more than 500</i>
09/01/2015	Court Trial (9:00 AM) (Judicial Officer: McKee, D. Duff)
09/15/2015	Findings of Fact and Conclusions of Law <i>Findings of Fact, Conclusions of Law, and Directions for Entry of Judgment</i>
09/24/2015	Judgment <i>Judgment</i>
09/24/2015	Civil Disposition Entered <i>Civil Disposition entered for: Gomez, Richard D, Defendant; Phillips, Todd J, Plaintiff. Filing date: 9/24/2015</i>
09/24/2015	Status Changed <i>STATUS CHANGED: Closed</i>
09/24/2015	Dismissed Party (Phillips, Todd J) Party (Gomez, Richard D)
09/25/2015	Memorandum <i>Memorandum Of Attorney Fees And Costs And Supporting Declaration</i>
10/05/2015	Objection <i>Objection to Motion for Costs and Attorneys Fees</i>
10/05/2015	Affidavit <i>Plaintiffs Counsels Affidavit in Support of Objection to Fees Costs</i>
10/09/2015	Reply <i>Defendant's Reply To Plaintiff's Objection To Defendant's motion For Costs and Attorney Fees</i>
10/30/2015	Notice of Appeal <i>NOTICE OF APPEAL</i>
10/30/2015	Appeal Filed in Supreme Court <i>Appealed To The Supreme Court</i>

ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE No. CV-OC-2013-20057

02/01/2016	Notice <i>Notice of Transcript Lodged - Supreme Court No. 43678</i>
08/24/2016	Motion <i>for Entry of Amended Final Judgment</i>
08/24/2016	Stipulation <i>for Entry of Amended Final Judgment</i>
08/31/2016	Judgment <i>Re-entered</i>
10/06/2016	 Remittitur <i>- Dismissed - Supreme Court No. 43678</i>
10/07/2016	Appeal Filed in Supreme Court
10/07/2016	 Notice of Appeal

DATE	FINANCIAL INFORMATION	
	Defendant Gomez, Richard D	
	Total Charges	195.00
	Total Payments and Credits	195.00
	Balance Due as of 12/28/2016	0.00
	Plaintiff Phillips, Todd J	
	Total Charges	332.25
	Total Payments and Credits	332.25
	Balance Due as of 12/28/2016	0.00

But/Wait
9/23/15

Steven Fisher, ISBN 7466
Fisher Law Office, PLLC
1859 S. Topaz Way, Ste 200
Meridian, ID 83642
T: (208) 350-7277
F: (208) 350-7278
E: steven@fisherlawpllc.com
Attorney for Defendant

NO. Re-entered
A.M. 10:05 P.M. FILED
SEP 24 2015

AUG 31 2016

CHRISTOPHER D. RICH, Clerk
By TARA VILLEREAL
DEPUTY

CHRISTOPHER D. RICH, Clerk
By TARA VILLEREAL
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TODD J. PHILLIPS, IN HIS CAPACITY AS
TRUSTEE OF TRUST "A" OF THE ELLIOTT
FAMILY TESTAMENTARY TRUST,

Case No. CV OC 1320057

JUDGMENT

PLAINTIFF,

VS.

RICHARD D. GOMEZ,

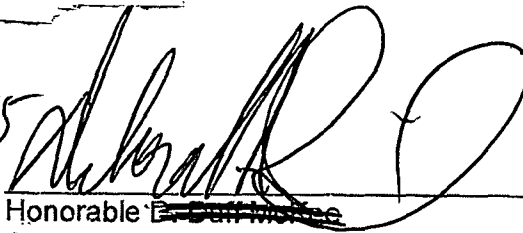
DEFENDANT.

JUDGMENT IS ENTERED AS FOLLOWS:

1. Judgment is entered in favor of the Defendant and against the Plaintiff.

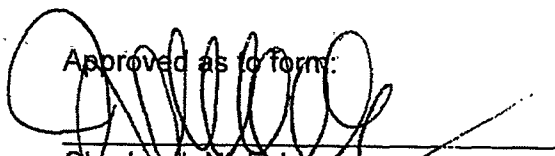
Plaintiff shall recover nothing by his complaint.

DATED

September 23, 2015 

Honorable ~~E. Paul Wallace~~
Senior District Judge

Approved as to form:


Charles J. Nicholas
Attorney for Plaintiff

JUDGMENT - Page 1

000172

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September, 2015, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

Charles J. Nicholas
Attorney at Law
PO Box 547
Boise, ID 83701
Fax: (208)780-7701

☐ Hand Delivery
☒ U.S. Mail
☐ Overnight Courier
☐ Facsimile Transmission

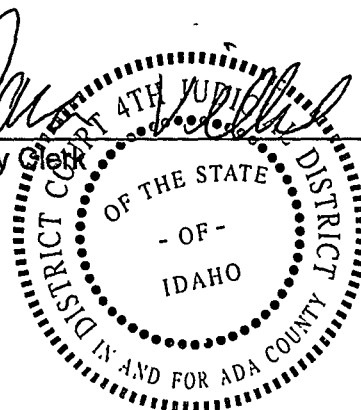
Steven Fisher
Fisher Law Office, PLLC
1859 S. Topaz Way, Ste 200
Meridian, ID 83642
Fax: (208)780-7701

☐ Hand Delivery
☒ U.S. Mail
☐ Overnight Courier
☐ Facsimile Transmission

CHRISTOPHER D. RICH
CLERK OF THE DISTRICT COURT

By: _____

Deputy Clerk



Charles J. Nicholas (ISB#1732)
Attorney at Law
Post Office Box 547
Boise, Idaho 83701
Telephone: ((208) 340-6600
Facsimile: (208) 780-7701
Email: charlesjnicholas@grouponesir.com

NO. _____
A.M. _____ FILED P.M. 240

OCT 07 2016

CHRISTOPHER D. RICH, Clerk
By KATRINA HOLDEN
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

**TODD J. PHILLIPS, in his capacity as
TRUSTEE OF TRUST "A" OF THE
ELLIOTT FAMILY TESTAMENTARY
TRUST**

Plaintiff/Appellant.

vs.

RICHARD D. GOMEZ

Defendant/Respondent.

Case No. CV OC 1320057

NOTICE OF APPEAL

Fee Category: L(4) \$129.00

**TO: THE ABOVE NAMED RESPONDENT, RICHARD D. GOMEZ, AND HIS
ATTORNEY OF RECORD, STEVEN FISHER OF FISHER LAW OFFICES, 1859 S.
TOPAZ WAY, STE. 200, MERIDIAN IDAHO 83642, AND THE CLERK OF THE
ABOVE ENTITLED COURT.**

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, TODD J. PHILLIPS, acting in his capacity as Trustee of Trust "A" of the Elliott Family Testamentary Trust, appeals against the above named respondent to the Idaho Supreme Court from the final judgment entered in the above entitled action on the 31st day of August, 2016, Honorable Judge Deborah A. Bail presiding. A copy of that Judgment is attached hereto as Exhibit "A".
2. That the party has the right to appeal to the Idaho Supreme Court, and the judgment described in paragraph 1 above is an appealable order under and pursuant to

NOTICE OF APPEAL

CV-OC-2013-20057
NOTA
Notice of Appeal
152635



Rule 11 I.A.R.. The Appellant has previously appealed from a "Judgment" entered in this case on September 24, 2015, which "Judgment" the Idaho Supreme Court has concluded was not an appealable final judgment (see Supreme Court Docket No. 43678-2015). A copy of The Idaho Supreme Court's September 6th 2016 "Order Dismissing Appeal Without Prejudice" entered in that Docket is attached hereto as Exhibit "B" to this Notice of Appeal.

3. The appellant intends to assert the following issues on appeal, together with any other issues which may hereafter appropriately be raised: 1. The lower court wrongly found that the payment of non-refundable earnest money to appellant by respondent, and the acceptance of the same by appellant, constituted a binding election by appellant to accept the earnest money as liquidated damages in the future event of the respondent's failure to close the transaction as agreed; 2. The lower court wrongly concluded the appellant could not recover any additional sums from the respondent for its actual damages; 3. The court has not yet ruled on the respondent's motion for costs and attorney fees, but the respondent has requested excessive and unreasonable costs and attorney fees and the appellant reserves the right to appeal any unreasonable award of costs and fees the trial court may hereafter order.

4. No order has been entered sealing any part of the record.

5. The reporter's standard transcript as defined in Rule 25(c) I.A.R. was requested and filed and is part of the record in Docket No. 43678-2015.

6. By his previous Notice of Appeal, the appellant requested that all documents or charts admitted as exhibits at the trial of this matter be copied and sent to the Supreme Court and, to Appellant's knowledge and belief, that was done and those

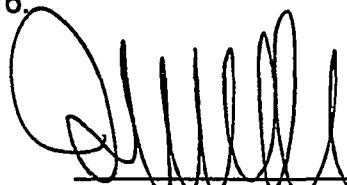
exhibits are part of the record in Docket No. 43678-2015. Appellant's counsel has been advised by a Deputy Clerk of the Idaho Supreme Court that the transcript, exhibits, briefs and other documents filed in that Docket will be transferred into the Docket created by this Appeal and become part of the record of this Appeal.

7. A transcript of the trial court proceedings in this matter was requested from, and provided by, the Court Reporter, Nicole Julson, and that transcript is filed in Docket No. 43678-2015. For that reason, Appellant has not requested a duplicate transcript. And the Appellant has not paid any additional estimated fee for the preparation of a duplicate of the Reporter's transcript.

8. That the clerk's record of the case being appealed from has previously been prepared and filed with the Idaho Supreme Court in Docket No. 43678-2015 and that the fee for the preparation of that record has been paid and any further fees which may be requested by the clerk's office on, or subsequent to, the filing of this Notice of Appeal will be promptly paid.

9. That the appellate filing fee has been paid and that service has been made upon all parties required to be served pursuant to Rule 20, I.A.R..

DATED this 7th day of October, 2016.



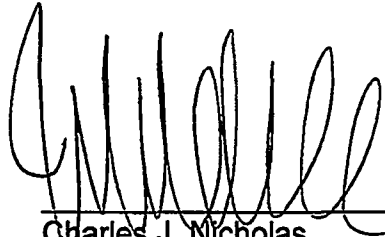
Charles J. Nicholas
Attorney for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of October, 2016, I caused a true and correct copy of the foregoing NOTICE OF APPEAL to be served upon the following individual by depositing the same in the U.S. mail, first class postage prepaid:

**STEVEN FISHER
Fisher Law Offices, PLLC
1859 S. Topaz Way, Ste. 200
Meridian, Idaho 83642**

DATED this 7th day of October, 2016.



Charles J. Nicholas

Steven Fisher, ISBN 7466
Fisher Law Office, PLLC
1859 S. Topaz Way, Ste 200
Meridian, ID 83642
T: (208) 350-7277
F: (208) 350-7278
E: steven@fisherlawpllc.com
Attorney for Defendant

NO. Re-entered
A.M. 10:00 P.M. 1:25

SEP 24 2015

AUG 31 2016

CHRISTOPHER D. RICH, Clerk
By TARA VILLEREAL
DEPUTY

CHRISTOPHER D. RICH, Clerk
By TARA VILLEREAL
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TODD J. PHILLIPS, IN HIS CAPACITY AS
TRUSTEE OF TRUST "A" OF THE ELLIOTT
FAMILY TESTAMENTARY TRUST,

PLAINTIFF,

VS.

RICHARD D. GOMEZ,

DEFENDANT.

Case No. CV OC 1320057

JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

1. Judgment is entered in favor of the Defendant and against the Plaintiff.
Plaintiff shall recover nothing by his complaint.

DATED

September 23, 2015

Honorable [Signature]
Senior District Judge

Approved as to form:

[Signature]
Charles J. Nicholas
Attorney for Plaintiff

JUDGMENT - Page 1

EXHIBIT "A"

000178

In the Supreme Court of the State of Idaho

TODD J. PHILLIPS, in his capacity as
Trustee of Trust "A" of the Elliott Family
Testamentary Trust,

Plaintiff-Appellant,

v.

RICHARD D. GOMEZ,

Defendant-Respondent.

ORDER DISMISSING APPEAL
WITHOUT PREJUDICE

Supreme Court Docket No. 43678-2015
Ada County No. CV-2013-20057

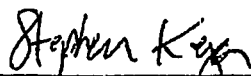
WHEREAS, an Order was entered by this Court on August 16, 2016, advising that this appeal would be dismissed unless this Court receives a copy of a final judgment that conforms with Rule 54(a) of the Idaho Rules of Civil Procedure by August 30, 2016, and this Court not having received a copy of a final judgment that conforms with I.A.R. Rule 54(a) by August 30, 2016; therefore,

IT HEREBY IS ORDERED that this appeal be, and hereby is dismissed without prejudice as the Final Judgment "re-entered" on August 31, 2016, was not timely received in this Court pursuant to this Court's Order of August 16, 2016.

IT FURTHER IS ORDERED that oral argument previously set for December 7, 2016, be and hereby is, VACATED.

DATED this 6th day of September, 2016.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
Court Reporter
District Judge Deborah A. Bail

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TODD J. PHILLIPS, in his capacity as
Trustee of Trust "A" of the Elliott Family
Testamentary Trust,

Plaintiff-Appellant,

vs.

RICHARD D. GOMEZ,

Defendant-Respondent.

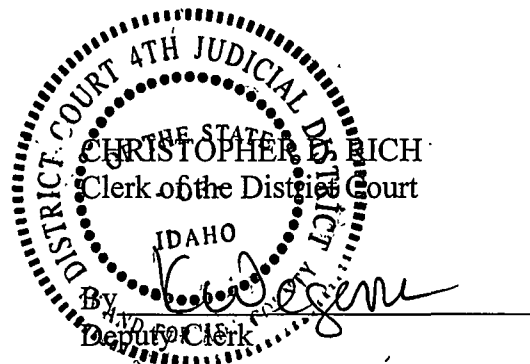
Supreme Court Case No. 44594

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

That the exhibits in this case have previously been forwarded to the parties in prior appeal No. 43678.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 28th day of December, 2016.



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TODD J. PHILLIPS, in his capacity as
Trustee of Trust "A" of the Elliott Family
Testamentary Trust,

Plaintiff-Appellant,

vs.

RICHARD D. GOMEZ,

Defendant-Respondent.

Supreme Court Case No. 44594

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have
personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of
the following:

LIMITED CLERK'S RECORD

to each of the Attorneys of Record in this cause as follows:

CHARLES J. NICHOLAS

ATTORNEY FOR APPELLANT

BOISE, IDAHO

STEVEN FISHER

ATTORNEY FOR RESPONDENT

MERIDIAN, IDAHO

Date of Service: DEC 28 2016

CHRISTOPHER D. RICH
Clerk of the District Court
By [Signature]
Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TODD J. PHILLIPS, in his capacity as
Trustee of Trust "A" of the Elliott Family
Testamentary Trust,

Plaintiff-Appellant,

vs.

RICHARD D. GOMEZ,

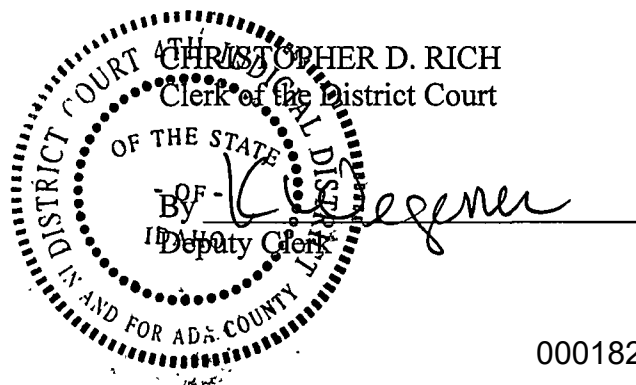
Defendant-Respondent.

Supreme Court Case No. 44594

CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 7th day of October 2016.



CERTIFICATE TO RECORD

000182